

REMARKS

Claims 1, 2, 4-6 and 12-19 are pending in the present application. Claims 1 and 12 have been amended to more clearly define that which the inventor believes is his invention. Claims 13-19 are sought to be added. The new claims are directed to coating processes comprising a copolymer containing specific co-monomers and a surfactant(s). Specific support for claim 13 can be found at page 7, paragraph 31 in the original specification and at page 7, paragraph 28. In view thereof, Applicant believes no new matter has been added by the amendments.

Reexamination of the application and reconsideration of the rejections are respectfully requested in view of the following remarks.

The data provided in the original specification shows that the present coating processes enhance control over respiratory exchange and prolongs the shelf-life of post-harvest fruit. Moreover, in claims 1, 2, 4-6 and 13-19, the presently claimed processes comprise a copolymer comprising co-monomers that are not disclosed or suggested in the cited references.

I. Rejection under 35 U.S.C. § 103(a)

Claims 1, 2 and 12 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Scott et al. (USPN 2,872,325) ("Scott") in view of Nisperos-Carriedo et al. (USPN 5,376,391) ("Nisperos-Carriedo") further in view of Liu (USPN 4,710,388) ("Liu"). OA, p. 2. Applicant respectfully traverses.

First, in claims 1 and 2, the presently claimed processes require co-monomers selected from the group consisting of acrylic acid, methyl acrylic acid, vinyl chloride, vinyl acetate, methyl methacrylate, propylene, ethylene, acrylates, styrenes, and combinations thereof. Scott does not teach or fairly suggest any of these co-monomers, and neither does Nisperos-Carriedo or Liu. Therefore, even if these references were combined, one of ordinary skill in the art would not arrive at the required copolymer. For at least this reason, the Office Action fails to establish a *prima facie* case of obviousness against claims 1 and 2.

Second, with regard to the emulsifier, it is settled that a reference may be relied upon for all that it would have *reasonably* suggested to one of ordinary skill the art, including non-preferred embodiments. *Merck & Co. v. Biocraft Laboratories*, 874 F.2d 804, (Fed. Cir.), *cert. denied*, 493 U.S. 975 (1989). The Advisory Action states that "Scott neither discloses 'that non-ionic surfactants can not [sic] be used' nor teaches that non-ionic surfactants are

‘surfactants that are typically avoided.’ AA, p. 3. The Office Action uses the wrong standard because a reference cannot explicitly state that which it does not disclose. The question is what Scott reasonably suggested to one of ordinary skill in view of the state of the art. To answer this question, Applicants properly submitted after a new final rejection the excerpt from Principles of Polymerization as evidence showing that one of ordinary skill in the art would have known that non-ionic surfactants are not functional equivalents as alleged by the Office Action. It is noted that Scott optionally stabilizes the fresh latex with “additional surfactant.” The reasoning given in the Advisory Action that one of ordinary skill would add additional surfactant that is a non-ionic surfactant, and not the same anionic surfactant disclosed in Scott is based on what is, a) “readily available and affordable at the time” and b) “non-toxic and edible and safe to be added to foods.” See, e.g., OA of October 28, 2009, p. 4 and AA. p. 3. This reasoning is attenuated given that Scott uses anionic surfactants for the same purposes. There would have been no reason to make the exchange except in hindsight, which is improper. Thus, with regard to the surfactant, the Office Action fails to provide an “articulated reasoning with some rational underpinning to support the legal conclusion” of obviousness. *KSR International Co. v. Teleflex, Inc.*, 127 S.Ct. 1727, 1741 (2007). For this additional reason, the Office Action fails to establish a *prima facie* case of obviousness against claims 1 and 2 as well as claim 12.

With further regard to the emulsifier, the combined teachings of the cited references do not overcome the deficiencies of Scott. In Liu, the emulsifier “enhances the effectiveness of gibberellins(s) and permits somewhat lower concentrations of gibberellins(s) to be used in the treating medium.” Col. 3, lines 60-63. In Nisperos-Carriedo, the emulsifier simply facilitates mixing of the pre-formed polysaccharide polymer into the coating composition. Col. 6 lines 60 through col. 7, lines 38. However, neither reference suggests that the surfactants are equivalent in the process of Scott.

With regard to claims 4 and 6, the Office Action further cites Yang et al. (USPN 6,165,529) (“Yang”). Applicant respectfully traverses. Yang is used for its disclosure of an antimicrobial agent. OA of January 25, 2008, p. 6. Yang merely discloses a PVOH/starch composition wherein the

surfactant reduces the surface tension of the starch and the PVOH [polyvinyl alcohol] and facilitates the formation of a very uniform and homogenous coating composition.

Col. 4, lines 10-14. In view thereof, the addition of Yang cannot overcome the deficiencies in Scott with regard to the co-monomers and the surfactants.

With regard to claim 5, the Office Action further cites Bice et al. (USPN 3,674,510) ("Bice"). Applicant respectfully traverses. Bice is used for its disclosure of an anti-fungal agent. Id., p. 7. Bice does not teach any surfactant, and only states that TBZ could be applied as an aqueous suspension or dispersion. *See, e.g.*, col. 3 lines 10-12. In view thereof, the addition of Bice cannot overcome the deficiencies in Scott with regard to the co-monomers and the surfactants.

Claims 1, 2 and 12 have been rejected as being unpatentable over Scott in view of Lee (USPN 4,729,190) ("Lee"). Lee is directed to a *blend* of a polymeric carboxylic acid and a surfactant. With regard to claims 1, 2 and 12, Lee does not teach or suggest that a non-ionic surfactant can replace the surfactant used in Scott. Nor does Lee teach the claimed copolymer of claims 1 and 2. Therefore, Lee cannot overcome the deficiencies of Scott. Likewise, with regard to claim 4, the addition of Yang (discussed above) to Scott and Lee cannot overcome the deficiencies in Scott. Nor can the addition of Bice (discussed above) to Scott and Lee overcome the deficiencies in Scott with regard to claim 5.


For the foregoing reasons, Applicant respectfully requests withdrawal of all rejections and favorable consideration of claims 1, 2, 4-6 and 12-19. A Notice to this effect is respectfully requested. If any questions remain, the Examiner is invited to contact the undersigned at the number given below.

The Director is hereby authorized to charge any appropriate fees that may be required by this paper, and to credit any overpayment, to Deposit Account No. 23-1925.

Respectfully submitted,

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